

DECISION

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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-213908.2

DATE: August 29, 1984

MATTER OF: National Service Company

DIGEST:

1. Information provided to contracting officer by third-low bidder in support of its assertion that second-low bidder is not small business is a size status protest which should have been referred to the Small Business Administration prior to award.
2. The government cannot award a contract for services for a period which would extend beyond the date specified in the invitation, as the award must be made on the same terms as those offered to all bid.

National Service Company protests the award of a contract under solicitation No. DAHC30-84-B-0001, issued as a small business set-aside by the Military District of Washington for operating the government-owned dry cleaning plant at Fort Myer, Virginia, for the period December 1, 1983 through September 30, 1984. We sustain the protest.

Upon bid opening, Radcliff Industries (Radcliff), was the apparent low bidder, Aquasis Services, Inc. was the second low, and National was the third low. On October 28, 1983, the contracting officer received a letter from National alleging that Aquasis was not a small business concern because of its affiliation with another firm. At that time the contracting officer, intending to award to the low bidder, Radcliff, viewed National's letter as "informational" and did not request a size status determination on Aquasis from the Small Business Administration (SBA) but instead initiated a preaward survey of the three low bidders. The contracting officer, as a result of the

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preaward survey, found Radcliff nonresponsive; Radcliff declined to file for a Certificate of Competency from the SBA. The contracting officer, on April 13, then awarded a contract to Aquasis.

Upon learning of the award, National protested here. The agency, shortly thereafter, referred the question of the awardee's size status to the SBA. On May 16, the SBA determined that Aquasis was not a small business. The agency, willing to terminate the contract with Aquasis, then asked National if it would accept an award at the price stated in its bid for the remainder of the contract period. National refused, stating it would accept a 1-year contract.

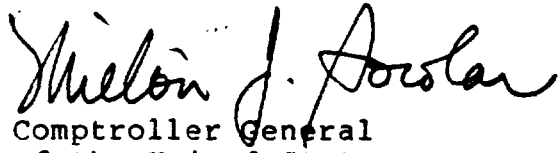
The gist of National's protest is that the contracting officer acted unreasonably in awarding a contract to Aquasis without first forwarding its protest on that firm's size status to the SBA, and that this entitles it to a 1-year contract or at least "the six months contract erroneously awarded to Aquasis."

We agree that the contracting officer should have referred the question of size status of Aquasis to the SBA before making award to that firm. A contracting officer is required to refer a timely size status protest to the SBA prior to making an award. Defense Acquisition Regulation § 1-703(b)(1). A protest is defined as "a statement . . . that a bidder or offeror . . . is not a small business concern." Such a protest may be filed with respect to "any bidder or offeror." *Id.* National's letter to the contracting officer offered "information supporting our position that Aquasis . . . [is] ineligible for consideration for award under the SBA size standard for [the] solicitation." The letter then detailed information concerning the alleged relationship between Aquasis and another company. We think this clearly constituted a size status protest under the applicable regulation.

This does not entitle the protester to the relief it seeks, however. The appropriate corrective action for this situation is termination of the awardee's contract and award to National for the remainder of the contract

term, as the agency has been willing to do since May. There is no legal basis for the agency to offer National a contract which extends beyond September 30, 1984. A contract award pursuant to the advertising statutes must be made on the same terms as those offered to all bidders. Tennessee Valley Service Company, 57 Comp. Gen. 125 (1977), 77-2 CPD 442. Because the solicitation specified September 30, 1984 as the ending date for the contract, an award under the solicitation could not properly include a performance period that extended beyond that date. The only way a contract could be awarded to National at this point for a 6-month period would be on a sole-source basis. Sole-source awards may be made, however, when only one source can furnish the government's needs, which is obviously not the situation here.

Accordingly, while we sustain the protest, we cannot recommend the relief the protester seeks. The Army advises that it will conduct a new competitive procurement for fiscal year 1985, and the protester, of course, is free to compete for that award.

for 
Comptroller General
of the United States